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Contemporary Liberal Concepts of Property¹

Introduction

English-language scholarly literature uses two terms to describe property: property and ownership. These terms are often used interchangeably². They define “rules governing access to and control of land and other material resources”³, or the relationship of subjects with respect to objects⁴. John Christman emphasizes that this is a complex relation rather than a simple one⁵. A similar view is expressed by Jeremy Waldron, who states that private property

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¹ This article is a modified and shortened version (without the elements of criticism) of the seventh chapter of the book: D. Juruś, *W poszukiwaniu podstaw libertarianizmu* (In search of the foundations of libertarianism), Kraków: Księgarnia Akademicka, 2012.

² Cf. J. Christman, *The Myth of Property. Toward an Egalitarian Theory of Ownership*, New York: Oxford University Press, 1994; J. Waldron, *The Right to Private Property*, Oxford: Clarendon Press, 1988; *idem*, *Property and Ownership*, Stanford Encyclopedia of Philosophy, <https://plato.stanford.edu/entries/property/> (access: November 2019).

³ Cf. J. Waldron, *The Right to Private...*, p. 31.

⁴ Some scholars argue that since the subject of ownership is not always a material thing, but also intangible objects, the subject of the ownership relationship should be rights, not things. Cf. J. Christman, *The Myth...*, p. 16.

⁵ Christman proposes a four-element relationship, which consists of: (1) owners; (2) ways of possessing; (3) other people; (4) thing(s). *Ibidem*, p. 23.

is not a simple relationship between a person and an object, but a complex bundle of relationships that differ in nature and effect⁶. In turn, James O. Grunebaum claims that “ownership in general is a right constituted relationship, or set of relationships, between person in respect to things”⁷. On the other hand, Stephen R. Munzer argues that property may refer to tangible things or may signify relations (mainly legal) between people or other entities with respect to things⁸.

When writing of liberal conceptions of ownership, I am referring to those notions whose proponents assume that the goal of a person is self-development and a respectable life. Subsequently, they presuppose that one of the conditions for such development is having (not necessarily private) property, which endows individuals with both autonomy and a sense of dignity. They also subscribe to the view that since not every individual is able to secure this property in the form of resources enabling his or her survival and development, the state must step in as the ultimate property redistributor. According to the theories of these philosophers, it is the state that is to decide about the just structure of property and, consequently, in conformity with this structure, provide individuals with access to property in one form or another. In light of this stance, property rights are not absolute but only relative. This means that the redistributive and regulatory function of the state is not only justified, but also necessary⁹.

⁶ J. Waldron, *The Right to Private...*, p. 28.

⁷ J.O. Grunebaum, *Private Ownership*, London – New York: Routledge & Kegan Paul, 1987, p. 4.

⁸ S.R. Munzer, *A Theory of Property*, Cambridge Cambridge University Press, 1990, p. 16. These relationships can be further specified by referring to the typology proposed by Wesley Newcomb Hohfeld, who distinguished four basic relations and elements correlated with them: (1) claim rights and duties as correlate concepts; (2) liberty rights and no claim; (3) authority rights and ability; (4) immunity and disability. Cf. W.N. Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning”, *Yale Law Journal* 1913, No. 23, pp. 16–59. Quoted in: S.R. Munzer, *A Theory...*, pp. 17–22.

⁹ John Rawls’s view was not included in the theories presented in the article, because he did not devote too much attention to property (the term “property” is not listed in the index of Rawls’s *A Theory of Justice*). Rawls argued that problems related to the system of ownership are secondary, ancillary and should be the subject of practice rather than considerations of

Ownership as a bundle of rights

The authors of liberal concepts of property view property rights not as a unified whole but as a bundle of rights. First and foremost, it allows them to “split” property rights into the right to have control over the thing owned, the power to transfer and the right to earn income¹⁰. This “split” of property rights leads to the conclusion that these rights should not be treated in the same way. This means, for example, that different principles of fair distribution apply in the case of the right to control an item, and different ones in the case of the right to income obtained from that item.

Such is the position of John Christman, who, in *The Myth of Property*, claims that the liberal concept of so-called private ownership must be rejected¹¹. According to this concept, the ownership relationship occurs when an individual has the right to possess, use, manage, alienate, consume, destroy and gain

political philosophy. When selecting the authors, I decided to include only those (which, of course, does not mean all) who wrote separate monographs on the concept of property. Rawls does not meet this condition. Stephen R. Munzer says directly that in Rawls's *A Theory of Justice* we will not find a precise theory of ownership. Cf. S.R. Munzer, *A Theory...*, p. 233.

¹⁰ These three elements seem crucial to grasping the essence of the liberal view of property. The full liberal concept of ownership would consist of the incidents of ownership proposed by Antony M. Honoré: (1) the right to own, or the right to possess: to have exclusive physical control of a thing; (2) The right to use: to have an exclusive and open-ended capacity to personally use the thing; (3) The right to manage: to be able to decide who is allowed to use the thing and how they may do so; (4) The right to the income: to the fruits, rents and profits arising from one's possession, use and management of the thing; (5) The right to the capital: to consume, waste or destroy the thing, or parts of it; (6) The right to security: to have immunity from others being able to take ownership of (expropriating) the thing; (7) The incident of transmissibility: to transfer the entitlements of ownership to another person (that is, to alienate or sell the thing); (8) The incident of absence of term: to be entitled to the endurance of the entitlement over time; (9) The prohibition on harmful use: requiring that the thing may not be used in ways that cause harm to others; (10) Liability to execution: allowing that the ownership of the thing may be dissolved or transferred in case of debt or insolvency; and, (11) Residuary character: ensuring that after everyone else's entitlements to the thing finish (when a lease runs out, for example), the ownership returns to vest in the owner. See: A.M. Honoré, “Ownership”, in: L.C. Becker, *Property Rights. Philosophic Foundations*, London: Routledge 1983, pp. 18–19; J. Waldron, *The Right to Private...*, p. 49; M. Kaczmarczyk, *Wstęp do socjologicznej teorii własności* (Introduction to sociological theory of property), Warszawa: Oficyna Naukowa, 2006, pp. 60–61.

¹¹ Christman, rejecting the absolute theory of property, identifies it with the concept of dominium, or unlimited control over things. J. Christman, *The Myth...*, pp. 5 and 17.

income from his or her possessions without anyone's interference, especially one whose purpose is to introduce some sort of a distribution scheme¹². Christman renounces the liberal concept of private ownership, which draws on classical liberalism, because of its "absolute"¹³ character, manifesting itself, e.g. in the equal treatment of the right to control objects and the right to obtain income from them¹⁴ (Christman considers the latter right to be the key to liberal ownership¹⁵). Under this concept, individuals have not only the full right to control things in their possession, but also the sole right to gain income from these things. However, according to Christman, these rights should not only be distinguished from each other, but also treated differently. Christman postulates a different approach to distribution for these two kinds of ownership¹⁶. He believes that control of a property expresses the autonomy of the individual, while the right to income is only related to the allocation of resources, which has no direct bearing on individual autonomy¹⁷. According to Christman, property rights are not a monolithic block of entitlements, but a bundle of two rights: the right to control (use, manage, destroy, etc.) and the right to obtain income (from trade, rental or production)¹⁸.

Whereas in the case control ownership, Christman is in favour of maintaining a person's autonomy, when the right to income is concerned, he repudiates the power of individuals to decide on this issue. The researcher defines the right to income as an increased

¹² *Ibidem*, p. 31.

¹³ The absolutism undercurrent of property rights is characteristic not for the classical-liberal but the libertarian concept of ownership. See. D. Juruś, "Is Classical Liberalism the Source of Libertarianism?", *Res Publica. Revista de Historia de las Ideas Políticas* 2016, vol. 19, No. 2, pp. 437–458.

¹⁴ J. Christman, *The Myth...*, p. 7. By alluding to this distinction, Christman evokes the concept of the right to income introduced by Pierre-Joseph Proudhon, which, according to both Proudhon and Christman, violates the principle of egalitarianism.

¹⁵ *Ibidem*, p. 66.

¹⁶ *Ibidem*, p. 8 and 12. The necessity of the split the rights into the right to control and the right to income results, in Christman's opinion, also from the way in which modern corporations are run, wherein owners and managers have other types of rights.

¹⁷ *Ibidem*, pp. 7–8.

¹⁸ *Ibidem*, p. 11.

benefit flowing from goods owned by others, artificial scarcities and economic rent. If the state confiscates such rent, it denies the owner of the right to income, without depriving him or her of the right to trade. The right to income means the right to obtain additional benefits from the object, which are not the benefits derived from the use value of the object¹⁹. Christman stresses that in imperfect markets with a scarcity of goods, operating costs and natural barriers to trade, the prices of some goods may exceed the costs incurred by the agent bringing them to the market. In this situation, buyers and sellers receive economic rent. Therefore, full income rights guarantee the owners benefits that go beyond the rights to exchange goods²⁰.

James O. Grunebaum, who proposes the concept of autonomous ownership, is also a defender of individual autonomy with respect to ownership. His theory rests on the moral principle of the autonomy of the individual, which says that each person, while respecting the autonomy of others, has the right to decide about his or her own good and about how to pursue it²¹. Like Christman, Grunebaum proposes to “split” the rights of autonomous ownership into rights to ownership of self and labour and rights over land and resources. (Grunebaum – unlike Christman – assumes that the individual has not only the right to work, but also to gain income derived from work).

Self and labour rights are private, while land and resource rights are similar to co-ownership. Thus, according to Grunebaum, the principle of autonomous ownership excludes both joint ownership of a person and his or her work, and private ownership of land and resources. Autonomy, writes Grunebaum, requires that every

¹⁹ *Ibidem*, p. 130.

²⁰ *Ibidem*.

²¹ *Ibidem*, pp. 3–4. Cf. J.O. Grunebaum, *Private Ownership...*, p. 143. Grunebaum uses the term “ownership” instead of the term “property”. He believes that property is associated more with something that is found in a thing or object, and not with the relationship between persons and relevant things. Instead, the term “ownership” refers to relationships into which people enter in connection with certain things. An object itself contains no characteristics that would give it the status of someone’s property. *Ibidem*, pp. 3–4.

individual should have the right to manage his or her work, as well as the right to income from that work and that “each individual must have the right to participate in decisions about how land and resources are used as, as well as the right to a share of the income produced by land and resource utilization”²².

Although, according to Grunebaum’s view, the rights to self, labour and income are to be private, and thus guarantee the autonomy of the individual, certain restrictions are imposed on them. They relate to the obligation to help others who are in need “In situation where others ought to be helped, they have a legitimate claim to a portion of one’s labor and income?”²³. This obligation is, in turn, limited by the individual’s own good. This means, as Grunebaum himself admits, that the individual does not have an absolute right to ownership of his or her labour and its fruits²⁴.

The principle of autonomy implies the right of everyone to co-decide on the use of land and its resources²⁵. The cited author does not allow the possibility of private possession of land, resources or some means of production. In his opinion, private ownership of land and its resources is at odds with the principle of autonomy with respect to those who do not possess. Grunebaum maintains that, in this case, each person’s right to decide about themselves, and thus their autonomy, is contravened²⁶.

The inability to decide on the allocation of shared resources leads to a violation of the autonomy principle. Each member of a community is entitled to co-decide on its resources²⁷. A contravention of the principle of autonomy occurs when an individual or group of people managing a piece of land (who are not, in light of Grunebaum’s view, its owner) does not consult each decision about how to use it. “Everyone has a right to be consulted”, writes Grunebaum; as

²² *Ibidem*, p. 2.

²³ *Ibidem*, p. 171.

²⁴ *Ibidem*, pp. 148–149.

²⁵ *Ibidem*, p. 170.

²⁶ *Ibidem*, p. 153.

²⁷ *Ibidem*, pp. 174–182.

the principle of autonomous ownership over land and resources dictates this²⁸.

Autonomous ownership combines private and joint ownership. The individual is, therefore, the private owner of himself or herself and his or her work, but he or she is not the owner of land and resources that are common property. According to Grunebaum, individual autonomy requires the private self-ownership and labour ownership and the joint ownership of the land and its resources. This kind of ownership is supposed to lead to a situation in which everyone will be the proprietors of land and its resources. Any other situation is, in his opinion, unjust because it generates inequality, which infringes the principle of individual autonomy²⁹.

The division of property rights imposes different restrictions on certain rights. The essence of those restrictions boils down to the statement that while the autonomy of the individual requires guaranteeing a person some minimum form of ownership, control over an object (Christman), and the possibly of income (Grunebaum), then in the case of income (Christman) or resources and land (Grunebaum) individuals lose the ability to independently decide about their allocation.

Priority of distributive justice over ownership

The conviction that distributive justice has priority over property rights lies at the root of the various forms of property distribution. This is what supporters of liberal property conceptions assume. In other words, they say that the structure and forms of ownership must be adapted to the principles of distributional justice. "What one owns is what one owns justly"³⁰, Christman writes. He also argues that property rights are a function of the total distribution

²⁸ *Ibid*, p. 178. Grunebaum believes that institutions such as inheritance, gift or exchange cannot constitute ownership criteria for the divestiture of property.

²⁹ *Ibidem*, p. 153 and 175.

³⁰ J. Christman, *The Myth...*, p. 10.

of goods in society, which means that ownership should be shaped on the basis of distributive principles that govern the economy³¹. Christman makes no secret of the fact that his goal is a targeted, just distribution of resources, which is aimed to lead to a certain ownership structure³². The guarantor of this distribution is the state. That is why Christman does not think that state interference in the economy (*resp.* the free market) is something wrong. Christman, accepting that the state determines the pattern of distribution, accordingly recognizes that it defines both the rules governing the economy and the structure of ownership³³.

Stephen R. Munzer holds a similar opinion. In the book titled *A Theory of Property*, he claims that consent to property rights over external things of the world – that is, control over them and making profit from them – must be preceded by an analysis considering the impact that these rights have on their holders, especially on their personality, individuality, moral character, and future generations³⁴. According to Munzer, this analysis can lead to the establishment of a certain ownership structure. Property rights are, therefore, secondary to the rules that organize society. So, as in the case of Munzer, we are dealing here with a certain pattern, which is based on the principles of utility and efficiency (UE) and justice and equality (JE). The principle of efficiency-usability (EU) says that property should be allocated in such a way as to maximize usability and efficiency of the use, possession and transfer of goods³⁵. This principle implies the belief that a certain amount of public property is justified under the assumption that people prefer security, access to education, protection against fire, crime, etc. It also warrants some – moderately equal – distribution of private property³⁶.

³¹ *Ibidem*, p. 126.

³² In this case, we would speaking of the patterned principle according to Robert Nozick. See. R. Nozick, *Anarchia, państwo, utopia* (Anarchy, State, Utopia), trans. P. Maciejko, M. Szczubiałka, Warszawa: Fundacja Aletheia 1999, subsection *Jak wolność łamie schematy* (How liberty upsets patterns), pp. 194–198.

³³ J. Christman, *The Myth...*, p. 126.

³⁴ S.R. Munzer, *A Theory...*, p. 58.

³⁵ *Ibidem*, p. 4.

³⁶ *Ibidem*, pp. 206, 212–214.

On the other hand, the principle of justice-equality (JE) presupposes that “the unequal property holdings are justifiable if (1) everyone has a minimum amount of property (the Floor Thesis) and (2) the inequalities do not undermine a fully human life in society (the Gap Thesis)”³⁷.

The Floor Thesis says that basic human needs (such as food, clothing, shelter or medical care) and basic capabilities (such as reading, writing, counting, working or being able to appear in public places without shame) should be ensured³⁸.

Broadly speaking, the Gap Thesis aims to limit inequalities that prevent the individual from attaining a fully human life, which consists of a sense of dignity and self-esteem³⁹. Munzer reasons that even if the conditions arising from the underlying thesis are met, wealth inequalities in society can be so wide that they will prevent some individuals from developing and thereby awarding them equal moral value. According to Munzer’s concept, ownership and property rights intend to serve the achievement of a certain social ideal, whose goals are efficiency, justice and equality.

Both Christman and Munzer assume that ownership rights cannot be considered independently of a broader view of society, and, above all, of the notion of fair distribution based on the principles of egalitarianism. It is only formulating the principles of justice that can allow choosing the right forms of ownership.

Labour and merit as titles to ownership

Advocates of liberal property concepts reject Locke’s theory that labour constitutes a title to ownership. According to John Locke, work is the property of the labourer, it is the act by which external

³⁷ *Ibidem*, pp. 5 and 229. One could look here for an analogy to the two principles of justice formulated by John Rawls, who argued that certain goods are necessary to be free and who listed personal property as one of them. Munzer discusses these issues. *Ibidem*, pp. 233–241.

³⁸ *Ibidem*, p. 241.

³⁹ *Ibidem*, p. 247.

things become the property of a person; for the labour belongs to him or her⁴⁰: “The «labour» of his body and the «work» of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property”⁴¹. Labour, like the duty to keep humanity alive, is also a divine command:

God, when He gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth – i.e., improve it for the benefit of life and therein lay out something upon it that was his own, his labour⁴².

Removing something out of the state of nature, where everything is common “b e g i n s the property, without which the common is of no use”⁴³. The beginning of private property is, therefore, associated with the original appropriation. Appropriation does not require everyone’s consent, because everyone is entitled to do so and the thing extracted from the state of nature “becomes my property without the assignation or consent of anybody”⁴⁴.

Locke claims that property entitlement must be charged on both the effort or toil put into creating or transforming an object, and the labour that improved an object. He adopts the labour concept of value and writes that effects of work account for nine tenth of the value of each product⁴⁵. He needs this theory to justify private

⁴⁰ “For this «labour» being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to”. J. Locke, *Two Treatises of Government*, §27, York University, Toronto <https://www.yorku.ca/commnel/courses/3025pdf/Locke.pdf> (access: December 2019).

⁴¹ *Ibidem*.

⁴² *Ibidem*, §32.

⁴³ *Ibidem*, §28.

⁴⁴ *Ibidem*.

⁴⁵ *Ibidem*, §40. In the theory of value based on work, it is assumed that the value of the item produced is determined by the amount of work invested into its production. Adam Smith and Karl Marx, among others, supported this theory. Murray Newton Rothbard ascribes Locke not so much to the labor theory of value as the labor theory of the origin of property. See. M.N. Rothbard, *Economic Thought before Adam Smith*, vol. 1, Auburn: Ludwig von Mises

property. For if a person's work causes a change in the world for the better, then he or she has the right to something that he or she has removed from the state of nature. Locke assumes here that work and the toil associated with it are a necessary – though insufficient – condition for acquisition. If the transformation of the world were done in the opposite ratio (the contribution of man was one tenth, and the remaining “work” was done by nature), then it would be more difficult for him to justify private acquisition. Locke gradually increases these proportions in favour of work (99 : 100 and 999 : 1000)⁴⁶ to declare: “For whatever bread is more worth than acorns, wine than water, and cloth or silk than leaves, skins or moss, that is wholly owing to labour and industry”⁴⁷ [emphasis DJ].

The work expended in a product grants the title to the property, because it entails improving something. “God and his reason commanded him to subdue the earth – i.e., improve it for the benefit of life and therein lay out something upon it that was his own, his labour”⁴⁸. The improvement of things through labour stems from God's command and, at the same time, the human right to preserve oneself and others. Furthermore, it is the basis of ownership, which means that destructive work does not give such entitlement⁴⁹. God, as Locke states, “gave it to the use of the industrious and rational (and labour was to be his title to it); not to the fancy or covetousness of the quarrelsome and contentious”⁵⁰. Therefore, labour is not only the effort put into a thing (for example, on a whim,

Institute, 2006, pp. 57 and 317). However, it seems that under Locke's definition, work is a source of both property and value.

⁴⁶ J. Locke, *Two Treatises...*, §41, § 43.

⁴⁷ *Ibidem*, §42. It seems that the examples are not quite successfully chosen by Locke. In the case of wine and bread, much of the work is “done by nature”. Locke admits that there is a difference between making bread (the number of people and activities involved) and collecting acorns from the ground. In the latter case, the labour theory of value seems to be less fitting. Therefore, as Waldron notes, it is paradoxically more problematic to acquire acorns than a piece of land that is being cultivated. See. J. Waldron, *The Right to Private...*, p. 193.

⁴⁸ J. Locke, *Two Treatises...*, §32.

⁴⁹ If I throw garbage into a pond that is not owned by anyone, I do not make this pond my property.

⁵⁰ J. Locke, *Two Treatises...*, §34.

for entertainment or out of a destructive impulse), but an activity through which the thing is improved. The command to improve things results directly from the command for self-preservation. If people did not perfect things, did not transform them, they would not be able to survive and thus would not be able to fulfil the divine mandate. It seems, therefore, that only labour that improves deserves to be called rational, i.e., such that pleases God.

Christman argues that the work involved in the production or processing of something does not give the right to bequest and income from that product: the only thing that it justifies is the right to own and use that thing⁵¹. "All that Locke intends, even in a version of the argument that stresses the added value of labour, is to establish rights to exclusive use, possession, and management [of property – added by DJ] in a world where the enjoyment of such rights is necessary for the «advantage of life and convenience» and where others are not made worse off by such appropriation"⁵². Because, according to Christman, the added value of labour does not guarantee the exclusive right to transmissibility and income, the individual only has a contingent right to the produced goods⁵³. In addition, according to Christman, creation of resources is not only the result of an individual's work, but depends on interaction with others, the existence of a market and stable social relations⁵⁴. Therefore, the individual cannot claim rights to transfer and proceeds from a given item, because by interacting with another person, he or she ceases to be the sole holder of the rights to that item.

In Christman's opinion, the title to the ownership of a given object does not result from merit, which is to be the outcome of the effort expended in the process of labour. In his opinion, individuals do not

⁵¹ J. Christman, *The Myth...*, pp. 54 and 66.

⁵² *Ibidem*, p. 52.

⁵³ Christman claims that if we agree to the imposition of distributive restrictions on acts of original appropriation, we can also impose restrictions on all subsequent actions of individuals, especially those that lead to receiving income from the given appropriation. *Ibidem*, p. 66.

⁵⁴ *Ibidem*, p. 57.

deserve income from an imperfect market determined by competitive forces. Therefore, in Christman's view, the concept of desert does not vindicate the idea of liberal ownership, which includes the right to transfer and income⁵⁵. Christman claims that the character traits and talent that an entrepreneur must exhibit – being undeserved – do not entitle him to profits. He maintains that an entrepreneur has no right to profit, because this profit also comprises things that are not in his or her discretion (these include limited resources, information and technology, together with patents and copyrights)⁵⁶. Christman argues that since entrepreneurs do not deserve profits, they also do not deserve the right to income.

Similar doubts are raised by Lawrence C. Becker, who asks about the reason behind the belief that the work invested into something grants ownership rights over this thing⁵⁷. He draws attention to the fact that in the case of parents' relationships with their children, the right to property over the fruits of their own work seems controversial: either parents are not the owners of their children, or children are not (until adulthood) the owners of themselves⁵⁸.

Becker, recognizing Locke's right to own one's body and the right to own one's work which was derived therefrom, questions the right to possess the products of that work as separate from one's body and labour⁵⁹. He claims that the question asked by Robert Nozick is valid, namely – why, when performing work, do we assume that we become the owners of its products, and not that we lose something?⁶⁰. Becker asserts that the work involved in something,

⁵⁵ *Ibidem*, pp. 84 and 87.

⁵⁶ *Ibidem*, p. 91. Christman also analyses the argument that an entrepreneur deserves profit, because he or she took the risk associated with setting up a company, production, etc. However, he rejects it, arguing that risk alone cannot be the basis for merit. If you take risk for the wrong cause, you cannot say you deserve a profit. It is also not the case that the degree of risk is proportional to the profit. Sometimes we risk a lot, and we receive a small profit, and vice versa. *Ibidem*, p. 91.

⁵⁷ L.C. Becker, *Property Rights...*, p. 40.

⁵⁸ *Ibidem*, p. 37.

⁵⁹ *Ibidem*, p. 40.

⁶⁰ *Ibidem*. Nozick's thought, to which Becker refers, reads as follows: "If I own a can of tomato juice and spill it in the sea so that its molecules (made radioactive, so I can check

although it renders the thing “mine”, does not give me ownership of it. In this case, argues Becker, demanding the right to a given product will be the same as demanding admiration for the labour, gratitude from other members of the group, or an entry in the world book of achievements⁶¹. Becker believes that the obligation to prove that the work inputs in the production or processing of goods lead to ownership rests with those who argue for this point, not those who criticize it⁶².

When disputing the concept of justifying property rights by referring to claims to ownership of labour, Becker cites the words of Pierre-Joseph Proudhon: “The rich, exclaims Jean Jacques, have the arrogance to say, «I built this wall; I earned this land by my labour». Who set you the task? We may reply, and by what right do you demand payment from us for labour which we did not impose on you? All sophistry falls to the ground in the presence of this argument”⁶³. Becker summarizes Proudhon’s thought as follows: since we did not force you to work, we do not have to pay you by granting you ownership of the thing into which you invested your labour⁶⁴. Becker assumes that any acquisition causes a competitive advantage and as such is unfair. He asks the rhetorical question: why should intelligent people inherit the earth? Did they deserve the resources that enable them to take over?⁶⁵. Becker contends that the acquisition of goods through the work invested them, while

this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?”. R. Nozick, *Anarchy...*, p. 209. Nozick’s witty example, however, misses the point. For neither Locke nor any of his followers would call the situation described by Nozick a legitimate acquisition of anything. According to Locke, the title of ownership is connected with the type of labour that improves a thing, not wastes it. Let us also note that if Nozick’s question and Becker’s doubts were justified, we would be facing an absurd situation in which the question of property rights would become unfounded. If the performed work were a wasted effort that does not, according to Locke’s reasoning, give entitlement rights to things, then all such “products” would enter the market as nobody’s. No trade would be possible then, because no one would own anything.

⁶¹ L.C. Becker, *Property Rights...*, p. 40.

⁶² *Ibidem*, p. 40

⁶³ J.P. Proudhon, *Co to jest własność?* (What is property?), in: J. Dziżyński, *Proudhon*, Warszawa: Wiedza Powszechna, 1975, p. 181. See also L.C. Becker, *Property Rights...*, p. 41.

⁶⁴ L.C. Becker, *Property Rights...*, p. 44.

⁶⁵ *Ibidem*.

imposing on others the obligation to refrain from interference in these fruits of labour, deprives others of their freedoms⁶⁶. He also argues that the idea of the labouring process being sufficient to legitimise a title to ownership cannot be a source concept, that is to say, one that no longer requires proof. According to Becker, work can be a reason i.e. entitlement to reward, but not to ownership⁶⁷. Ownership can only be the reward for work in some cases.

The same applies to the idea of merit or desert, which, for Becker, cannot qualify as grounds for property rights⁶⁸. Becker argues that labour inputs should not always be remunerated by granting the labourer the title of ownership; sometimes this reward can be a substitute in the form of money, and sometimes it can be appreciation or gratitude⁶⁹.

Stephen R. Munzer also rejects the possibility of legitimising ownership through work as merit. He formulates the principle of desert by labour (DL), which states that there is a justification for rights of private property based on the work invested by a person in a given thing. At the core of this principle is the belief that persons are agents who performs actions in the world and, consequently, they are entitled to receiving benefits for the results of these actions⁷⁰. He proposes a revised DL theory suggesting that the traditional Lockean concept rests on unrealistic premises which favour private property⁷¹.

Revised by Munzer, the concept assumes that natural or voluntary duties can modify property rights arising from work contributions⁷². This theory imposes several restrictions on the DL principle, including: (1) the limitation resulting from the obligation (a) to those who, due to physical or mental impairment, are unable to work (employees must give up part of their profits to these people),

⁶⁶ *Ibidem*.

⁶⁷ *Ibidem*, p. 47.

⁶⁸ *Ibidem*, p. 51.

⁶⁹ *Ibidem*, p. 53.

⁷⁰ S.R. Munzer, *A Theory...*, p. 254.

⁷¹ *Ibidem*, p. 255.

⁷² *Ibidem*, p. 267.

(b) related to the use of goods or the failure to use them (holders have the duty to use their goods in such a way as to avoid any evident waste)⁷³; (2) the limitation resulting from a post-acquisition situation, which is not directly caused by the acquisition (if, for example, someone acquires a field where they grow wheat, however due to a drought next year later, no one is able to claim possession of the wheat based on their work, as Munzer argues, the proprietary rights of the person who acquired the wheat are now diminished)⁷⁴; (3) a limitation due to a general scarcity of resources (in this case, the producers of the goods do not receive property rights, but a salary).

Comparing his own, revised labour theory with Locke's principles, Munzer states that the initial (Locke's) theory of property, which is purely moral, lacks the instruments by which it could be put into practice. However, the revised theory is enforceable thanks to institutional tools⁷⁵.

Munzer argues that the traditional labour-merit theory is only an anchor for *prima facie* property rights, not for property rights in general. He believes that the right to property as a result of merit arising from work is relative and not absolute under the initial theory. In his opinion, firstly, by granting ownership to person A of thing X, which A has created or acquired, this theory does not prove that individuals B, C etc. have no claim-right to that thing, for example based on their high moral character. Secondly, the theory does not justify the fact that an individual deserves to possess work-facilitating qualities (diligence, perseverance, intelligence, entrepreneurship) that enable his or her labour and, consequently, acquisition. If people are not deserving of these qualities, then, Munzer claims, they are not deserving of the things they possess⁷⁶.

James O. Grunebaum also criticizes Locke's concept of labour as an act which gives title to ownership. In his opinion, the principle of autonomous ownership is incompatible with Locke's justification of

⁷³ *Ibidem*, p. 268.

⁷⁴ *Ibidem*, p. 276.

⁷⁵ *Ibidem*, p. 286.

⁷⁶ *Ibidem*, pp. 260–262.

property rights. At the root of Locke's concept are two unwarranted assumptions: (1) unappropriated things are not anyone's property; (2) there is an abundance of goods. The cited author interrogates both of them. He argues that if we admit that not belonging to anyone means not belonging to anyone according to some unspecified form of ownership, the question of the original acquisition which entitles to private ownership remains open. However, if we are convinced that the earth belongs to all, then, in Grunebaum's opinion, individual private acquisition requires the consent of all, otherwise the acquisition will be groundless⁷⁷. This means that if someone believes that the original form of ownership is joint ownership, they may not agree to granting property rights to someone who acquired the thing before they did. Therefore, Locke's argument of "invested labour" is unfounded, in Grunebaum's opinion. The statement "this is mine because I possessed it first" is not a convincing argument in the debate on the autonomy of individuals⁷⁸. Grunebaum rejects the second assumption about the abundance of goods as completely unrealistic.

Jeremy Waldron also disputes the possibility of deriving the right to property from the performed work. In his opinion, the principle of acquisition as a result of labour – according to which this labour grants the title to ownership – is not compatible with our sense of morality⁷⁹, it is also not self-evident and would not be stipulated as part of a contract. Waldron writes that this is a principle "such that a whole people could not possibly agree to"⁸⁰. He is certain that individuals in a *quasi*-original situation would not adopt the principle that one should refrain from interfering in someone's property even in life-threatening situations⁸¹. In addition, a way of acquiring property

⁷⁷ *Ibidem*, p. 174.

⁷⁸ *Ibidem*, pp. 153, 155.

⁷⁹ "[...] could be unfamiliar, and may be unwelcome, addition to a morality just like our own". J. Waldron, *The Right to Private...*, p. 270.

⁸⁰ *Ibidem*, p. 278.

⁸¹ Waldron notes, however, that no legal system contains a proviso stating that in situations where life is threatened, the theft of someone's property is justified and that a necessity of life is an excuse for violating someone's property. *Ibidem*, p. 283.

by expended effort would favour more able and entrepreneurial individuals, while others would be at a disadvantage⁸². Therefore, according to Waldron, instead of Locke's principle, individuals could choose a Hobbesian state of nature in which, in order to survive, one could deprive others of property without committing injustice.

All of these philosophers question Locke's assertion that labour is a property entitlement, which, in consequence, means excluding others from the possibility of using the product of work. They maintain that labour is not a sufficient reason for limiting the possibilities of others, and thus their freedom.

Division into production and distribution

Proponents of the liberal concepts of ownership take for granted the division into production and distribution, recognizing that they are two separate processes⁸³.

The distinction between the right to preside over one's possessions and the right to gain income from them, which John Christman makes, presupposes a division into production and distribution. For if, as Christman assumes, different distribution rules apply to the rights to control an item and different – the rights to income, then there must be distribution which is separate from production. Therefore, like most modern political philosophers, the author

⁸² *Ibidem*, p. 275. See also pp. 274–275. Even if all individuals were equally equipped, those who acquired resources first would be privileged. *Ibidem*, p. 275.

⁸³ Friedrich von Hayek blamed John Stuart Mill for introducing this harmful distinction – which still appears in the economic discourse – which consequently leads to the notion of distributive or social justice. Mill wrote: "This is not so with the distribution of wealth. That is a matter of human institutions solely. The things once there, mankind, individually or collectively, can do with them as they like. They may place them at the disposal of whomever they please on whatever terms". J.S. Mill, *Principles of Political Economy*, New York: Augustus M. Kelly, 1987, p. 209. In *Autobiography*, Mill, however, criticizes those economists who confuse the laws of producing goods with the laws of their division, considering both to be what cannot be overcome or changed with human effort. See: J.S. Mill, *Autobiography*, after: M. Dobb, *Teorie wartości i podziału od Adama Smitha. Ideologia a teoria ekonomii* (Theories of value and distribution since Adam Smith. Ideology and economic theory), trans. W. Rączkowska, Warszawa: Państwowe Wydawnictwo Ekonomiczne, 1976, p. 135.

theorizes that first comes the labour and production performed by someone, and then the distribution of what has been produced. He consequently claims that the individual has the right to his or her labour, but not to its products, that is, the benefits derived from the produced goods. The produced items are subject to distribution, which is independent of individual will.

The same view of production and distribution is expressed by Stephen R. Munzer, who claims that every theory of property should grapple with both the problem of production and the problem of distribution. He accuses classical liberal theorists – from Adam Smith to Friedrich von Hayek – that by leaving production and distribution to market forces, they "tend to slight both problems"⁸⁴. Munzer does not accept, however, abandoning distribution to the market, as he believes that it should be the responsibility of the state. Therefore, he is in favour of levying taxes on both income and gratuitous transfers. He suggests that this taxation should be neither too low (so that it can cover some costs), nor too heavy (so as not to discourage labour). According to Munzer, the income thus obtained should be used to assuage the effects of hunger and to provide shelter, clothing or health care. In turn, production should be reorganized in such a way as to promote meaningful work (an element of this reorganization may include the improvement of working conditions or the enlistment of employees' in production goals). The consequence of such a reorganization would be a greater role of employees in the production process itself and their larger impact on the conditions in the workplace. Munzer emphasizes that such changes may admittedly reduce wealth, but they will increase the amount of meaningful work that can be valued more than wealth. He believes that the place of production in human life must be re-evaluated. As he writes, *homo faber* must be replaced by *homo cogitans* and *homo ludens*⁸⁵.

⁸⁴ S.R. Munzer, *A Theory...*, p. 184.

⁸⁵ *Ibidem*, pp. 184–185.

When separating the notions of production and distribution, Munzer distinguishes between production management and distribution management. Consequently, he must assume that since we are dealing with two types of management, we must also be dealing with two types of managers. While the scholar allows for the possibility of individualized production or individualized production management, he objects to fully individualized distribution. By making the distinction between production and distribution, he advocates the concept of ownership, in which the state, and not the individual, is the ultimate owner of property rights⁸⁶.

The role of the state

The division into production and distribution, commonly adopted among liberals, subsequently leads to assigning the distributive function to the state (and not to the market). The state decides to what extent an entity can control its property and how to derive income from it.

According to John Christman, the state acts as a distributor and redistributor of property. It is the state, he suggests, that decides about the ownership structure, i.e. what people can do with their holdings, “whether they could sell them and, if so, at what price”⁸⁷. “I reject the claim”, he writes, “that the state should play no role in structuring property rights for the sake of distributive goals”⁸⁸.

Christman proposes, on the one hand, state protection of control rights and, on the other, state control over the income of individuals. He advocates redistributive taxation that interferes with the right

⁸⁶ Becker also agrees, like other liberals, that the division into the allocation of resources used for the production and the distribution of goods is something widely accepted by economists. L.C. Becker, *Property Rights...*, p. 70. The subject of distribution are primarily shrinking resources, which are the justification for the restrictions imposed on property rights. These restrictions are inevitable due to problems related to the scarcity of resources.

⁸⁷ J. Christman, *The Myth...*, p. 4.

⁸⁸ *Ibidem*, p. 10–11.

to revenue. While he does not prohibit individuals from freely exercising their talents, at the same time, he is convinced that the proceeds from the use of these talents must be redistributed by the state on an egalitarian basis.

Christman admits that his concept of “equality of product” – understood as collective ownership of income – resembles the concept of collective ownership of talent⁸⁹. He acknowledges that the inequality of talent is the same as artificial monopolies in the economy and barriers to market access related to it. “My lack of access to your talents”, he writes, “functions the same way as do natural barriers that let proximity to resources determine distribution”⁹⁰.

Since the free market does not guarantee predictable income that minimal autonomy requires, the state must do so⁹¹. The state should therefore provide (irrespective of market mechanisms, which Christman partly accepts) the necessary means to secure minimal autonomy for all citizens⁹². According to him, market socialism is the system that can ensure this autonomy while partially maintaining free market mechanisms.

A similar position is taken by Stephen R. Munzer, who claims that only the government – and not free market entities – is able to justly distribute income and wealth and that leaving distribution in the hands of the free market will not warrant the fulfilment of values such as control over property, privacy or individuality⁹³. In his opinion, a system that can be called fair is only an arrangement in which distribution and allocation guarantee a minimum and/or sufficient amount of goods.

Munzer proposes a system in which the ultimate administrator of property is the state, whose task is to observe the principles of utility and efficiency as well as justice and equality. In practice, it

⁸⁹ *Ibidem*, p. 157.

⁹⁰ *Ibidem*, p. 158.

⁹¹ “So the state, by its nature, regulates the relative well-being of its citizens”. *Ibidem*, p. 174.

⁹² *Ibidem*, p. 171.

⁹³ S.R. Munzer, *A Theory...*, p. 110.

comes down to strengthening workers' rights, taxing donations and inheritances, and a number of regulations on private property⁹⁴. The nature of Munzer's concept comes to light when, in several places, he refers to the figure of the social planner, whose task, after analysing conflicting principles, is to make the best decision for the whole society⁹⁵.

For such a decision to be effective, the state that is supposed to meet basic needs and secure the achievement of vital life goals should be the owner of the resources which make this possible. According to Munzer, state ownership of resources and means of production is to warrant a quick and effective response to emerging problems or threats⁹⁶.

Lawrence Becker, assuming that there is a common good, maintains that those who contribute to its promotion deserve a reward, whereas those who reduce it by appropriating others' capabilities, deserve punishment. The state decides whether an activity or venture is conducive to the increase of prosperity and, consequently, who deserves what prize in what form. The penalty – for example in the form of taxation – is also meted out by the state.

Jeremy Waldron presupposes the existence of the state as an institution which ensures fair distribution. Since, in his opinion, work does not entitle one to ownership, there must be an higher instance that will decide about the allocation of what was produced as a result of someone's labour. This institution is the state which must act as a redistributor. However, Waldron claims, like Hayek, that it is not oppressive when already at the beginning the state sets limits to the expectations of individuals in the name of justice⁹⁷.

Proponents of liberal property concepts argue that property cannot be submitted to the rules of the free market, as it does not secure a just distribution of goods, which gives individuals the opportunity

⁹⁴ *Ibidem*, pp. 7 and 216.

⁹⁵ *Ibidem*, pp. 292, 295, 297, 300, 301, 311, 312.

⁹⁶ *Ibidem*, p. 245.

⁹⁷ J. Waldron, *The Right to Private...*, p. 425.

for growth. Therefore, a state whose task is to distribute resources fairly must step in. This means, first and foremost, that individuals cease to be the sole owners of acquired goods and resources.

Conclusion

Liberal concepts of ownership – unlike in classic Locke’s liberalism – make the content of the property right or the ownership relationship contingent on the content of positive law. In other words, they do not view property rights as a natural law. All the described concepts of ownership are egalitarian. Their main assumption, although not always explicitly stated, is that all people should have equal opportunities for personal growth, and ownership is one of the elements that should enable this growth. Egalitarianism, however, rules out the absolute nature of ownership or absolute control over the products of labour⁹⁸. Ownership cannot be exclusive, because it must serve everyone, while retaining the autonomy of the individual. Liberal property conceptions, therefore, aim to equally distribute property and to secure individual autonomy. (hence, in a sense, they are a response to Mill’s postulate of freedom of self-development and self-fulfilment). Therefore, supporters of this concept propose different treatment of control rights and income, land or resources rights. Distinguishing these rights from each other allows to apply to them different concepts of distributive justice which underpins the decisions about the ownership structure and ultimately seeks to narrow inequalities in society. The concept of ownership is thus founded on the concept of justice, whose purpose is to eliminate social inequalities.

⁹⁸ As Waldron writes, “It is probably a mistake therefore to insist on any definition of private property that implies a proprietor has absolute control over his resource”. J. Waldron, *Property and Ownership...*

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Contemporary Liberal Concepts of Property

The author presents the assumptions which form the bedrock of modern liberal property theories. It refers to the conceptions of John Christman, James O. Grunebaum, Lawrence Becker, Stephen R. Munzer and Jeremy Waldron. All these philosophers have devoted separate monographs to the problems of ownership and their works seem representative of the entire liberal current in contemporary political philosophy. This paper does not provide a detailed analysis of the authors' views on property, but focuses on the elements that these theories share. These are: (1) the bundle theory of property rights; (2) the priority of distributive justice over ownership; (3) the belief that labour is not a property entitlement; (4) the assumption about the separation of production and distribution; (e) the belief in the redistributive role of the state.

Keywords: property, justice, autonomy, work, distribution.